



## BRIEFING PAPER

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# Coronavirus Bill: Local authority meetings

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## 1. Coronavirus Bill: local authority proceedings

### 1.1 The Bill

Clause 78 of the [Coronavirus Bill 2019-21](#) introduces regulation-making powers with regard to meetings and proceedings of local authorities. These are broad powers to make regulations regarding:

- a) requirements to hold local authority meetings;
- b) the times at or by which, periods within which, or frequency with which, local authority meetings are to be held;
- c) the places at which local authority meetings are to be held;
- d) the manner in which persons may attend, speak at, vote in, or otherwise participate in, local authority meetings;
- e) public admission and access to local authority meetings;
- f) the places at which, and manner in which, documents relating to local authority meetings are to be open to inspection by, or otherwise available to, members of the public.<sup>1</sup>

These provisions appeared as Government amendments, [introduced at Committee Stage](#) in the Commons on 23 March 2020. They were approved without debate. They now form clause 78 of [the Bill as introduced into the House of Lords](#) on 24 March 2020.

The Government's exact plans for exercising these regulation-making powers, and the timescale in which they will be exercised, are not known. Likely aims are discussed under each sub-section below.

These are '[Henry VIII powers](#)', as the clause provides that regulations made under this section may "disapply or modify any provision of an enactment or subordinate legislation".<sup>2</sup> The provisions currently have a 'sunset clause', covering meetings required to be held before 7 May 2021 (the scheduled date of local elections in 2021).<sup>3</sup>

<sup>1</sup> [Coronavirus Bill 2019-21](#), clause 78 (1) (a), 24 March 2020

<sup>2</sup> *Ibid.*, clause 78 (4) (a)

<sup>3</sup> *Ibid.*, clause 78 (3). The Bill as a whole has a sunset clause lasting two years. For more information on sunset clauses, see the Library Insight [Coronavirus Bill :What is the sunset clause provision?](#)

## 2 Coronavirus Bill: Local authority meetings

The Bill applies to most categories of local authority in England and Wales, including parish and town councils, combined authorities, fire and rescue authorities, national parks, various types of joint committee, and the Greater London Authority. The new clause provides a full list of authorities covered. The Bill does not cover Police and Crime Commissioners.<sup>4</sup>

This part of the Bill extends to England, Wales and Northern Ireland. The regulation-making powers are to be held by the (UK) Secretary of State, the Welsh Ministers, and the Northern Ireland Department for Communities respectively. Any regulations are to be made under the negative procedure in each legislature.<sup>5</sup>

### 1.2 Annual meetings

In England and Wales, principal councils (county, district and unitary authorities) must hold an annual meeting in March, April or May each year. In an election year, the annual meeting must take place between eight and twenty-one days after the election.<sup>6</sup> Combined authorities and joint authorities must hold their annual meeting in March, April, May or June.<sup>7</sup> This obligation is statutory, found in schedule 12 of the [Local Government Act 1972](#).

In Northern Ireland, local authorities must hold their annual meeting in June each year, except for an election year, when it must be held within 21 days of the election.

Other than these requirements, it is up to principal councils in England and Wales to decide when to hold meetings.<sup>8</sup> Similarly, in Northern Ireland there is no obligation to hold other meetings during the year.<sup>9</sup> During the week of 16 March 2020, many local authorities had already begun to take decisions to cancel all meetings scheduled for April 2020.<sup>10</sup>

In England, parish and town councils must hold an annual meeting every May. In an election year, this must take place during the fourteen days after the elected members take office.<sup>11</sup> They must also hold at least three further meetings per year, on dates of their choosing.<sup>12</sup> In addition, each parish must hold a parish meeting (which is distinct from a meeting of the council) every year between 1 March and 1 June (inclusive).<sup>13</sup>

In Wales, parish and town councils must hold an annual meeting every May, but they are not required to hold any further meetings during the year.<sup>14</sup> There is no requirement in Wales to hold a separate annual community meeting.<sup>15</sup>

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<sup>4</sup> Ibid., clause 78 (7-8)

<sup>5</sup> Ibid., clause 78 (11-15)

<sup>6</sup> [Local Government Act 1972](#), schedule 12 paragraph 1

<sup>7</sup> Ibid, paragraph 6A

<sup>8</sup> Ibid, paragraph 2

<sup>9</sup> [Local Government Act \(Northern Ireland\) 2014](#), schedule 5

<sup>10</sup> Jessica Hill, "[Fears for democracy amid widespread coronavirus meeting cancellations](#)", Local Government Chronicle, 18 March 2020

<sup>11</sup> Ibid., paragraph 7

<sup>12</sup> Ibid, paragraph 8

<sup>13</sup> Ibid., paragraph 14

<sup>14</sup> Ibid., paragraph 23

<sup>15</sup> Ibid., paragraph 30

The Government is reported as having committed on 20 March 2020 to legislating to remove the legal obligation on local authorities to hold annual meetings, and to “allow councillors to dial in to vote in a meeting”.<sup>16</sup>

### 1.3 Remote attendance

There is no legal provision in England or Northern Ireland to allow councillors to attend meetings remotely. The law does not have any concept of remote attendance, neither permitting it or forbidding it. However, the [Local Government Act 1972](#) provides that “no business shall be transacted at a meeting of a principal council unless at least one quarter of the whole number of members of the council are present”.<sup>17</sup> This rules out the possibility of holding meetings remotely in England.

The powers in the current Bill would presumably be used to adjust that situation, though exactly how this would be implemented has yet to be made clear.

The Welsh Government introduced provisions regarding remote attendance at council meetings in section 4 of the [Local Government \(Wales\) Measure 2011](#). Councillors in Wales may be treated as attending a meeting remotely provided that:

- (a) the member in remote attendance is able at that time—
  - (i) to see and hear, and be seen and heard by, the members in actual attendance,
  - (ii) to see and hear, and be seen and heard by, any members of the public entitled to attend the meeting who are present in that place and who exercise a right to speak at the meeting, and
  - (iii) to be seen and heard by any other members of the public so entitled who are present in that place;
- (b) the member in remote attendance is able at that time to hear, and be heard by, any other member in remote attendance in respect of whom the condition in paragraph (a) is satisfied at that time;
- (c) use of facilities enabling the conditions in paragraphs (a) and (b) to be satisfied in respect of the member in remote attendance is not prohibited by the standing orders or any other rules of the authority governing the meeting.

This Measure also provides that at least 30% of members at a meeting must be physically present in order for the meeting to be quorate. This requirement could be altered by the Welsh Ministers under the provisions in the current Bill.

The Welsh Government published statutory guidance on remote attendance in 2011. It noted that remote attendance would have implications for staffing resources:

Where a number of councillors are expected to attend remotely at the same location, probably though not necessarily in a different council office from the place where the meeting is held, there may be a need for an officer to be present, both to support the members attending remotely but also to ensure that the equipment needed for remote attendance to function is operating correctly.

Local authorities will need to decide whether or not they wish to permit members of the public to be able to be present at a remote location. If so, an officer’s presence may be required to make arrangements for them.<sup>18</sup>

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<sup>16</sup> Sarah Calkin, [“Government to legislate for virtual committee meetings”](#), *Local Government Chronicle*, 20 March 2020

<sup>17</sup> [Local Government Act 1972](#), schedule 12 paragraph 6

<sup>18</sup> Welsh Government, [Statutory Guidance made under Section 4 of the Local Government \(Wales\) Measure 2011: Remote attendance at council meetings](#), 2014, p4

The guidance also suggested that councillors participating in meetings not open to the public, who allowed members of the public to see or hear private proceedings via a remote link, would be in breach of the Welsh code of conduct for councillors.

Where a video/audio link failed or became intermittent, it might become necessary to abandon the meeting, or to proceed without those attending remotely. Council standing orders should make provision for different circumstances:

...it is the Welsh Government's view that the chair should declare a recess while the fault is addressed. If necessary, the meeting would have to be abandoned and the meeting should not continue without the involvement of the remote members. Standing orders could, however, make different provision for different types of meetings etc, for example that a meeting taking an urgent decision or one which is time-limited, might either not be allowed to take place with remote attendees or that the meeting would proceed in the event of a communications failure, so that those attending remotely would be aware and accept that the meeting would continue and a vote would be taken without their attendance in the event of a communications failure.<sup>19</sup>

### Attendance and disqualification

In England and Wales, the 1972 Act also provides that any councillor who does not attend a meeting for six months is automatically disqualified, triggering a by-election.<sup>20</sup> Thus if a council held no meetings for a protracted period of time due to the coronavirus, this provision could come into effect. The Local Government Association published a briefing on 18 March noting this possibility:

These unprecedented times also mean that councillors may not be able to be physically present to vote for more than six months, either because they have already been absent due to illness or another reason, or because they will be unwell going forward, must self-isolate or undertake social-distancing. For local government to be able to continue to function democratically we need a provision in the Bill to allow Councillors to remain able to serve if they are not physically present to vote for more than six months.<sup>21</sup>

The provisions in the current Bill could be used to suspend this requirement, or to redefine 'attendance' as virtual attendance for the purposes of this requirement.

## 1.4 Public admission and access to local authority meetings

Members of the public have the right to attend local authority meetings unless the council or committee in question resolves that it will exclude members of the public. A local authority can only exclude members of the public for one of a number of specific reasons, set out in statute: there is no general power for councillors to choose to sit in private. In England and Wales, the relevant legislation concerning excluding the public from a local authority meeting is section 100A of the [Local Government Act 1972](#):

(2) The public shall be excluded from a meeting of a principal council during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that, if members of the public were present during that item, confidential information would be disclosed to them in breach of the obligation of confidence; and nothing in this Part shall be taken to authorise or

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<sup>19</sup> Ibid, p5

<sup>20</sup> *Local Government Act 1972*, section 85. Councils do currently have the power to agree a derogation from this provision in advance: this might be done, for instance, where a councillor is a reserve member of the Armed Forces and is called up.

<sup>21</sup> LGA, [Coronavirus Bill](#), March 2020, p7

require the disclosure of confidential information in breach of the obligation of confidence.

(3) For the purposes of subsection (2) above, “confidential information” means—

(a) information furnished to the council by a Government department upon terms (however expressed) which forbid the disclosure of the information to the public; and

(b) information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court;

and, in either case, the reference to the obligation of confidence is to be construed accordingly.

(4) A principal council may by resolution exclude the public from a meeting during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during that item there would be disclosure to them of exempt information, as defined in section 100I below.

In Northern Ireland, analogous provisions are found in part 8 of the [Local Government Act \(Northern Ireland\) 2014](#).

[Schedule 12A of the Local Government Act 1972](#) lists categories of exempt information as follows:

- 1 Information relating to any individual.
- 2 Information which is likely to reveal the identity of an individual.
- 3 Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 4 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
- 5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- 6 Information which reveals that the authority proposes—
  - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - (b) to make an order or direction under any enactment.
- 7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

As council meetings in England have not taken place to date with councillors attending remotely, no legislation or guidance exists on how to ensure that either the letter or the spirit of these transparency provisions is followed under those circumstances.

The Welsh statutory guidance on remote attendance (see above) mentions that local authorities might wish to make provision for the public to attend at a remote location. The guidance appears to envisage, for instance, several councillors *and* members of the public being able to attend a meeting from a location some distance from the council headquarters. It says nothing about the possibility of members of the public making their own arrangements for attending remotely, for instance by dialling in to a council meeting.

## 1.5 Inspection of documents

For England and Wales, the *Local Government Act 1972* requires agendas and related documents to be accessible to members of the public in advance of a local authority meeting taking place.

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(1) Copies of the agenda for a meeting of a principal council and, subject to subsection (2) below, copies of any report for the meeting shall be open to inspection by members of the public at the offices of the council in accordance with subsection (3) below.

....

(3) Any document which is required by subsection (1) above to be open to inspection shall be so open at least five clear days before the meeting, except that—

(a) where the meeting is convened at shorter notice, the copies of the agenda and reports shall be open to inspection from the time the meeting is convened, and

(b) where an item is added to an agenda copies of which are open to inspection by the public, copies of the item (or of the revised agenda), and the copies of any report for the meeting relating to the item, shall be open to inspection from the time the item is added to the agenda;

but nothing in this subsection requires copies of any agenda, item or report to be open to inspection by the public until copies are available to members of the council.<sup>22</sup>

Documents must also be made available after the meeting, including the minutes, any relevant reports, and a summary where possible of the outcome of proceedings not open to the public. These must be made available for six years after the meeting. A list of the background papers must be made available for four years. Analogous provisions can be found part 8 of the [Local Government Act \(Northern Ireland\) 2014](#).

Similar provisions are made for parish and town councils in England and Wales in the [Public Bodies \(Admission to Meetings\) Act 1960](#). These include that:

...public notice of the time and place of the [council's] meeting shall be given by posting it at the offices of the body (or, if the body has no offices, then in some central and conspicuous place in the area with which it is concerned) three clear days at least before the meeting or, if the meeting is convened at shorter notice, then at the time it is convened.<sup>23</sup>

Regulations might seek to bring these provisions into line with any move towards online meetings, as the law does not currently allow these requirements to be met purely through online means. Agendas and meeting papers can be sent to *councillors* through online means, with their active consent.<sup>24</sup>

### 1.6 Commentary

Ed Hammond, of the Centre for Public Scrutiny, expressed concern that democratic governance should not be forgotten when the emergency provisions begin to take effect:

Our way, as a sector, of managing this challenge must be a form of accountability and oversight which looks and feels more distributed and dynamic, and which engages with the realities of the situation with which we are faced.

It will involve councillors coming together remotely in wards, and divisions, to understand and deal with the biggest challenges. It will involve the chairs and vice chairs of scrutiny committees doing the same – even if their formal committees fall dormant – to consider and reflect on what is happening, drawing on intelligence from the community, and feeding a different insight and perspective into the council response. It will involve the conversations throughout this process being both publicly accessible, and ones in which the public can also positively participate.

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<sup>22</sup> [Local Government Act 1972](#), section 100B (3)

<sup>23</sup> [Public Bodies \(Admission to Meetings\) Act 1960](#), section 1 (4) (a)

<sup>24</sup> See the [Local Government \(Electronic Communications\) \(England\) Order 2015](#) (SI 2015/5)

..

A failure to do this risks councillors being cut loose, with those aside from a core of executive councillors becoming spectators, as their role is squeezed into insignificance between professional emergency response on one side and volunteer mutual aid in communities on the other.<sup>25</sup>

Philip Glanville, the mayor of Hackney, raised the issue of relaxing the Government requirement that local authorities should not communicate more than four times per year with their electorates.<sup>26</sup> The background to this issue is discussed in greater detail in the Library briefing paper [Local government transparency in England](#).

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<sup>25</sup> Ed Hammond, "[Good governance will be crucial during coronavirus crisis](#)", *Local Government Chronicle*, 18 March 2020

<sup>26</sup> Jessica Hill, "[Mayor: Loosen law on town hall newspapers to maximise corona comms](#)", *Local Government Chronicle*, 23 March 2020

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